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ALSTOM Power Inc.
200 Great Pond Drive
P.O. Box 500
WINDSOR CT 06095

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FEB 28 2012

OFFICE OF PETITIONS

In re Application of :
Jean-Xavier Morin et al. :
Application No. 10/590,357 : **DECISION ON PETITION**
Filed: September 14, 2006 :
Attorney Docket No. VA30455 :

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed December 21, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application was held abandoned for failure to timely pay the issue and publication fees on or before September 19, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed June 17, 2011. Accordingly, the date of abandonment of this application is September 20, 2011. A Notice of Abandonment was mailed on October 4, 2011.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (3).

As to item (3), the petitioner states that due to a "docketing error" a response to the Notice of Allowance was not timely received. Applicant provided an affidavit from office staff member Deborah Picciano having information regarding the docking procedures at the office of Alstom Power, Inc. Ms. Picciano states that "an employee of Alstom, Nancy Schofield had received the Notice of Allowance" and "missed blocks "B", "C", "D", "E", of the IP docketing system. Nancy Schofield had firsthand knowledge of the matter, according to the applicant, however no

statement from the employee was received. Applicant provides a flowchart of the docketing procedures of the IP Master docket. Applicant did not provide a copy of the actual IP Master docket, showing the receipt of incoming papers, most importantly the receipt of the Notice of Allowance mailed from the U.S. Patent and Trademark Office regarding this application. The Office also sent out an email notification of outgoing correspondence on June 17, 2011. The applicant was afforded more than one opportunity to respond timely to the Notice of Allowance.

The showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). *See* MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the \$1,860 petition fee. The “unavoidable” petition fee can be applied toward a petition to revive unintentionally.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

By way of the Electronic Filing System (EFS).

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/
Carl Friedman
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